IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1174 OF 2007

Pushpa Jaiprakash Oagle ....Petitioner
V/s
Jaiprakash Oagle ....Respondent.

Mr.Ramesh Chheda & Ms.Kokila Kalra, Adv. For the petitioner.
Mr.S.R.Page, Adv. For the respondent.

CORAM: A.P.DESHPANDE, J.
1/10/07

PC:

The present petitioner is wife whereas the respondent is the husband. Parties to the petition gat married on 1.4.1981 at Amravati. They are Budha by religion. Out of the marital wedlock the petitioner has given birth to a son by name Sandeep who is now about 24 years of age. The parties to the petition are staying separately since April, 1983 i.e. for last about 23 years. The petitioner is staying at Amravati. It has come on record that after separation the petitioner filed an application for maintenance under section 125 of Code of Criminal Procedure and the Court passed an order for grant of maintenance. It is the case of the respondent that he is paying maintenance to the wife since last 23 years. The respondent has filed a divorce petition in the Court at Amravati in the year 2001 and the same is pending. It is the case of the respondent that the divorce petition was fixed for hearing in the Court at Amravati on 15.7.06. After seeking an adjournment in the case on 15.7.06 the present petitioner came to Pune on 16.7.06 and entered the house of the husband along with unknown persons. The respondent-husband is residing in one of the flats which is described as row house No.6 in

Siddhivinayak Angan Row House, Hadapsar, Pune. As the petitioner tried to force her entry in the said row house No.6 the husband went to police station with a view to lodge a complaint. But no cognizance was taken. The petitioner yet again came to flat on 17.7.07 and broke open the door and tried to remove belonging of the respondent-husband. With this factual back ground the respondent-husband herein instituted a suit in the Family Court No.2, Pune for perpetual injunction and also moved an application at Ex.5 claiming temporary injunction against the wife and persons claiming through her seeking to restrain her from entering the respondent's house. The Family Court initially granted ad-interim temporary injunction which continued to operate for about a year and thereafter the application was taken up for final decision. The moot question that cropped up before the Family Court was as to whether row house No.6 could be termed as matrimonial house of the wife to entitle her to enter the same. The Family Court on appreciation of the pleadings and the material on record has held that the wife has been staying at Amravati and had never stayed in the flat in question viz. Row House No.6 at Hadapsar, Pune and hence concluded that the suit property is not matrimonial house of the petitioner-wife. Having found that the parties are residing separately since last 23 years coupled with the fact that the petitioner never stayed in the suit house any time prior to the attempt made to get in possession on 16 and 17th July, 2006, the Family Court recorded a finding of fact that the husband has proved that he has made out prima facie good case and that irreparable loss would be caused to the husband if temporary injunction is not granted. So concluding the Family Court proceeded to allow the application claiming temporary injunction. In the above set of facts it is obvious that the balance of convenience as well is in favour of the husband. Hence no interference is called for.

2. Learned counsel for the petitioner has contended that wife has right to stay in the matrimonial house even against wish of the husband. This position cannot be disputed but the fact remains that the suit house is not matrimonial house of the petitioner as she has never stayed in the suit property any time before. It is next contended that the husband has illicit relation with one Smt.Rekha Deshbhratar and two children are begotten out of the said relationship. This aspect of the matter has no bearing in deciding temporary injunction application. Learned counsel for the petitioner has referred to various rulings to point out the right of the wife qua the matrimonial house. As it is held that the suit house is not the matrimonial house the said rulings are of no assistance to the petitioner. Hence the judgments not being relevant are not dealt with. Thus writ petition being devoid of merit and substance stands dismissed summarily.

1.10.07